

The Director filed a motion for summary decision on November 20, 2013. Ms. Jones filed a response on December 4, 2013. She did not dispute the facts set out in the Director's motion. Instead, she argues that she has made significant changes in her life and so should be allowed to enter into a basic training course.

Under 1 CSR 15-3.446(6)(A),¹ we may grant summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” A party must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B).

Admissible evidence includes the pleadings of the opposing party, 1 CSR 15-3.446(6)(B), in this case, Ms. Jones’ complaint. Certified records are also admissible evidence, § 490.130, RSMo (2000),² and the Director submitted with his motion certified court records from the Audrain County Circuit Court. Accordingly, our findings of undisputed fact below are drawn from the complaint and the certified records.

Before setting out the facts, we note that in paragraphs 8, 10, 12, 14, 16, 18, 20, 22, and 24 of his motion, the Director purported to state certain facts about crimes Ms. Jones committed. We surmise that the Director drew these facts from the charging documents in the various criminal cases against Ms. Jones. But neither the charging documents nor any other certified records support the facts stated, except with respect to case no. 09U1-00600 (which involved two crimes), for which the Director provided a certified copy of the information. We therefore make no findings of fact in regard to the details of Ms. Jones’ various crimes, except with respect to the two in case no. 09U1-00600.

Findings of Fact

1. On December 29, 2008, Ms. Jones pled guilty to one count of theft/stealing of a credit card or letter of credit in the Audrain County Circuit Court, case no. 08U1-CR00808-01. The court suspended the imposition of sentence and placed Ms. Jones on supervised probation for five years. Resp. Ex. D.

2. On December 29, 2008, Ms. Jones pled guilty to one count of first-degree burglary

¹ References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² References to “RSMo” are to the Revised Statutes of Missouri.

and three counts of theft/stealing of a firearm in the Audrain County Circuit Court, case no. 08U1-CR00813-01. The court suspended the imposition of sentence and placed Ms. Jones on supervised probation for five years. Resp. Ex. A.

3. On March 2, 2009, Ms. Jones pled guilty to one count of passing a bad check of \$500 or more in the Audrain County Circuit Court, in case no. 08U1-CR00640-01. The court suspended the imposition of sentence and placed Ms. Jones on supervised probation for five years. Resp. Ex. B.

4. On March 23, 2012, the Audrain County Circuit Court granted Ms. Jones an early release from supervised probation on all counts in case nos. 08U1-CR00808-01, 08U1-CR00813-01, and 08U1-CR00640-01. Resp. Ex. A and B.

5. On July 9, 2009, Ms. Jones was charged in Audrain County Circuit Court with one count of third-degree assault, one count of first-degree trespass, and one count of second-degree property damage, in case no. 09U1-CR00600. The third-degree assault count was later amended to one count of peace disturbance (first offense). Resp. Ex. C.

6. With regard to the first-degree trespass count, Ms. Jones “knowingly entered unlawfully in an inhabitable structure located at 9570 Highway 15 and owned by [C.B.]” Resp. Ex. C.

7. With regard to the second-degree property damage count, Ms. Jones “knowingly damaged a necklace ... owned by [C.B.] by breaking it.” Resp. Ex. C.

8. On December 4, 2009, Ms. Jones pled guilty in case no. 09U1-CR00600 to one count of peace disturbance (first offense), one count of first-degree trespass, and one count of second-degree property damage. She was sentenced to ten days on the Audrain County Jail on each count. Resp. Ex. C.

9. Ms. Jones applied for entrance into a basic training course offered by the LETC³ program at the Moberly Area Community College in Moberly, Missouri.

10. On September 16, 2013, the Director of the Department of Public Safety sent notice to Ms. Jones advising her that her application for entrance into the basic training course had been denied under §§ 590.080.1(2) and (6), RSMo (Supp. 2012), and 11 CSR 75-13.090(3)(C).

Conclusions of Law

We have jurisdiction. § 590.080.2.

The Director is responsible for granting and denying applications for entrance into a basic training course. § 590.100, RSMo (Supp. 2012). The Director bears the burden of proving that cause exists to deny such an application, § 590.100.1 and .3, and must do so by a preponderance of the evidence, *see Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo.App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The question before us is a limited one: whether cause for denial exists. We may “not consider the relative severity of the cause for denial or any rehabilitation of the applicant or otherwise impinge upon the discretion of the director [of the Department of Public Safety] to determine whether to grant the application subject to probation or deny the application when cause” does exist. § 590.100.3.

Section 590.100.1 provides that the Director “shall have cause to deny any application for...entrance into a basic training course when the director has knowledge that would constitute cause to discipline the applicant if the applicant were licensed.” In relevant part, § 590.080.1(2)

³ The record does not disclose what “LETC” stands for.

provides the Director with cause to discipline a peace officer licensee who “has committed any criminal offense, whether or not a criminal charge has been filed[.]”

Ms. Jones committed nine criminal offenses:

Crime	Statute	Statutory Text	Classification of Crime
Theft/stealing of a credit card—one count	§ 570.030 ⁴	“A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.”	Class C felony, § 570.030.3(c)
First-degree burglary—one count	§ 569.160 ⁵	“A person commits the crime of burglary in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein, and when in effecting entry or while in the building or inhabitable structure or in immediate flight therefrom, he or another participant in the crime: (1) Is armed with explosives or a deadly weapon or; (2) Causes or threatens immediate physical injury to any person who is not a participant in the crime; or (3) There is present in the structure another person who is not a participant in the crime.”	Class B felony, § 569.160.2
Theft/stealing of a firearm—three counts	§ 570.030	“A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.”	Class C felony, § 570.030.3(d)

⁴ Citations to §570.030 are to the Revised Statutes of Missouri, (Cum. Supp. 2008).
⁵ Citations to §569.160 are to the Revised Statutes of Missouri (2000).

Passing a bad check of \$500 or more—one count	§ 570.120 ⁶	“A person commits the crime of passing a bad check when ... With purpose to defraud, the person makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee”	Class C felony § 570.120.4(1)
Peace disturbance (first offense)—one count	§ 574.010 ⁷	“A person commits the crime of peace disturbance if: (1) He unreasonably and knowingly disturbs or alarms another person or persons by: (a) Loud noise; or (b) Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or (c) Threatening to commit a felonious act against any person under circumstances which are likely to cause a reasonable person to fear that such threat may be carried out; or (d) Fighting; or (e) Creating a noxious and offensive odor; (2) He is in a public place or on private property of another without consent and purposely causes inconvenience to another person or persons by unreasonably and physically obstructing: (a) Vehicular or pedestrian traffic; or (b) The free ingress or egress to or from a public or private place.”	Class B misdemeanor §574.010.2
First-degree trespass—one count	§ 569.140 ⁸	“A person commits the crime of trespass in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property.”	Class B misdemeanor § 569.140.3

⁶ Citations to § 570.120 are to the Revised Statutes of Missouri (Cum. Supp. 2008).
⁷ Citations to § 574.010 are to the Revised Statutes of Missouri (2000).
⁸ Citations to § 569.140 are to the Revised Statutes of Missouri (2000).

Second-degree property damage—one count	§ 569.120 ⁹	“A person commits the crime of property damage in the second degree if ... He knowingly damages property of another.”	Class B misdemeanor § 569.120.2
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Ms. Jones pled guilty to all six felonies and all three misdemeanors. Her guilty pleas are competent and substantial evidence that she committed the crimes. *Dir., Dep’t of Public Safety v. Bishop*, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). But the trial court suspended imposition of sentence on all six of the felony counts, and a suspended imposition of sentence does not result in a final judgment. *Yale v. City of Independence*, 846 S.W.2d 193, 195 (Mo. 1993). Accordingly, Ms. Jones is not collaterally estopped from presenting evidence that she did not commit the six felonies. *Bishop*, 297 S.W.3d at 99. However, Ms. Jones admits in her response to the Director’s motion for summary decision that she committed the crimes.¹⁰ Accordingly, we conclude Ms. Jones did commit the six felonies.

Ms. Jones pled guilty to three misdemeanors. The court sentenced her to jail time. Such convictions are final judgments. *State v. Moore*, 352 S.W.3d 392, 398 (Mo.App. E.D. 2011). And a final judgment resulting from a guilty plea collaterally estops Ms. Jones from attempting to prove that she did not commit the crime. *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004). Moreover, Ms. Jones admits that she committed the crimes. We therefore conclude she committed the three misdemeanors.

Because Ms. Jones committed all nine crimes, the Director has established cause under § 590.080.1(2).

⁹ Citations to § 569.120 are to the Revised Statutes of Missouri (2000).
¹⁰ Petitioner’s Response, page 1, ¶ 3.

Ms. Jones explains in her complaint and in her response to the Director's motion that she has changed her life, including giving up drugs, pursuing an education, and becoming a good and effective parent, who has regained custody of her four children. Ms. Jones appears sincere. The obstacles she has overcome were significant ones, and we applaud what she has accomplished in changing her life for the better. But such evidence is for the Director to consider at the next step in the proceedings under § 590.100.4, not this Commission herein. As noted above, the limited question before us is whether cause exists.

The Director has cause under §§ 590.100.1 and 590.080.1(2) to deny Ms. Jones' application for entrance into a basic training course.

Summary

The Director's motion for summary decision is granted.

We cancel the hearing set for January 23, 2014.

SO ORDERED on December 23, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner